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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 ELECTRONIC FRONTIER FOUNDATION,) Case No. 16-cv-02041-HSG
13 Plaintiff,) **STIPULATION AND ORDER**
14 v.)
15 UNITED STATES DEPARTMENT)
16 OF JUSTICE,)
17 Defendant.)
18

1 The parties the Electronic Frontier Foundation (“EFF”) and the Department of Justice
2 (“DOJ”), by and through undersigned counsel, stipulate and respectfully request the Court enter an
3 order reflecting the following:

4 1. The parties have reached an agreement concerning the processing of EFF’s March 7,
5 2016 Freedom of Information Act (“FOIA”) request for “significant” opinions of the Foreign
6 Intelligence Surveillance Court (“FISC”). EFF has agreed to narrow the scope of its initial request,
7 and DOJ has agreed to process and respond to the narrowed request.

8 2. Specifically, EFF has agreed to narrow the scope of part one of its initial request from
9 any decision, order, or opinion issued by the FISC or the Foreign Intelligence Surveillance Court of
10 Review (“FISC-R”) issued from 1978 to June 1, 2015, that includes a significant construction or
11 interpretation of any provision of law, including any novel or significant construction or
12 interpretation of the term “specific selection term,” to all decisions, orders, or opinions of the FISC
13 or the FISC-R submitted to Congress by the Attorney General pursuant to Section 6002 of the
14 Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. section 1871(a)(5)); 50
15 U.S.C. sections 1871(c)(1) & (2); and 50 U.S.C. section 1881f(b)(1)(D) between July 1, 2003 and
16 June 1, 2015, which have not been previously declassified and made public (to include those
17 decisions, orders, or opinions previously identified by the Department of Justice to the Brennan
18 Center, https://www.brennancenter.org/sites/default/files/publications/The_New_Era_of_Secret_Law.pdf), that remain classified. DOJ has agreed to process and respond to the narrowed request.

20 3. The parties are currently in the midst of briefing cross-motions for partial summary
21 judgment. *See* ECF Nos. 29, 32. One issue in dispute was the propriety of EFF’s March 7 FOIA
22 request and DOJ’s determination that it would not process the request. The parties’ agreement on the
23 narrowed request effectively resolves that dispute.

24 4. Two deadlines related to the parties’ cross-motions currently remain on the Court’s
25 upcoming calendar. EFF’s reply brief in support of its motion for partial summary judgment is
26 currently due December 1, 2016. The hearing on the parties’ cross-motions is currently scheduled for
27

1 December 15, 2016.¹

2 5. In light of the agreement concerning the narrowed request, the parties accordingly
3 agree that further briefing in this matter should be stayed, and the current hearing date on the parties'
4 cross-motions vacated, to allow DOJ time to begin to process the narrowed request and for the
5 parties to continue to discuss the progress and timing of the litigation.

6 6. Despite agreement on the narrowed request, the parties still anticipate that further
7 motions practice will likely be necessary on some issues in order to resolve the case. The parties do
8 not know which issues those are at this stage, however. In the meantime, the parties agree to
9 continue to work in good faith to resolve outstanding issues in the litigation, including issues related
10 to the timing, production, and processing of responsive records, and the scope and timing of future
11 motions practice.

12 7. The parties further propose to file a joint status report on December 15, 2016, and
13 another joint status report on January 30, 2017, to apprise the Court of the progress of the parties'
14 discussions; the processing of responsive FISC opinions; and the parties' need, if any, to set future
15 briefing schedules, hearing dates, or to request other assistance from the Court.

16
17 DATED: December 1, 2016

18 /s/ Mark Rumold
Mark Rumold

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25 ¹ Additionally, the parties' anticipated filing a Joint Status Report on December 7, 2016,
concerning a separate FOIA request at issue in the case that was not subject to the parties' cross-
motions for partial summary judgment. *See* Joint Status Report, ¶ 5 (ECF No. 34). The parties
believe they have already reached substantial agreement on that request and report that additional
briefing related to that request will be unnecessary.

1 DATED: December 1, 2016

2 BENJAMIN C. MIZER
3 Principal Deputy Assistant Attorney General

4 BRIAN STRETCH
5 United States Attorney

6 ELIZABETH J. SHAPIRO
7 Deputy Branch Director

8 /s/Rodney Patton
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19 *Attorneys for Defendant*

20 **DECLARATION PURSUANT TO LOCAL RULE 5-1(I)(3)**

21 Pursuant to Civil L.R. 5-1(i)(3), I, Mark Rumold, declare that I obtained the concurrence of
22 Rodney Patton, counsel for Defendant, United States Department of Justice, in the filing of this
23 document.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct. Executed this 1st day of December, 2016 in San Francisco, CA.

26 /s/ Mark Rumold
27 Mark Rumold

28 * * *

1 Upon consideration of the parties' stipulation, it is:

2 **ORDERED** that further briefing on the parties' cross-motions for partial summary judgment,
3 including the filing of Plaintiff's Reply, is **STAYED**; and it is

4 **ORDERED** that the hearing on the parties' cross-motions for partial summary judgment on
5 December 15, 2016 is **VACATED**; and it is

6 **ORDERED** that the parties submit a joint status report on December 15, 2016, and another
7 joint status report on January 30, 2017, describing the progress of the parties' discussions; the
8 processing of responsive FISC opinions; and the parties' need, if any, to set future briefing
9 schedules, hearing dates, or to request other assistance from the Court.

10
11 DATED: December 2, 2016


HON. HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT JUDGE